



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

[Docket Number USCG-2022-0957]

RIN 1625-AA00

Safety Zone; Marina Del Rey New Year's Eve Fireworks Display, Marina Del Rey, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near the South Jetty on Ballona Creek, Marina Del Rey, CA, for the duration of the fireworks display on December 31, 2022. This temporary safety zone is necessary to provide for the safety of the waterway users to keep them clear of potential harmful debris within the fall out zone during the fireworks display within Marina Del Rey, CA. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Los Angeles – Long Beach, or their designated representative.

DATES: This rule is effective from 8 p.m. on December 31, 2022, through 1 a.m. on January 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2022-0957 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email the LCDR Maria Wiener, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 521-3860, e-mail D11-SMB-SectorLALB-

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<i>Federal Register</i>
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM would be impracticable due to the timing of the event. We must establish this zone by December 31 to provide for safety of the public and would be impracticable to publish an NPRM with a comment period and have sufficient time to consider the comments before the scheduled event on December 31, 2022.

For the reasons stated above, we are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be contrary to the public interest because action is necessary to protect persons and property from the dangers associated with the fireworks event on December 31, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U. S. C. 70034. The Captain of the Port Sector Los Angeles – Long Beach (COTP) has determined that potential hazards associated with navigation safety may arise because the fireworks display creates potential for hazards for any person or vessel within a 1,000-foot radius of the fireworks launch site 15 minutes prior to, and for the duration of the fireworks display. Potential hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners in Marina Del Rey, CA.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on December 31, 2022, encompassing all navigable waters within a 1,000-foot radius around the fireworks display on the South Jetty of Ballona Creek, in vicinity of Marina Del Rey, CA. Enforcement of the safety zone shall begin 15 minutes prior to the commencement of the fireworks display, and for the duration of the fireworks display, expected to commence at 9 p.m., and again at midnight. Each display is expected to last for approximately 30 minutes. These coordinates are based on North American Datum of 1983, World Geodetic System, 1984.

No vessel or person is permitted to operate in the safety zone without obtaining permission from the Captain of the Port (COTP) or the COTP's designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard designated by or assisting the Captain of the Port Sector Los Angeles – Long Beach (COTP) in the enforcement of the safety zone.

They may be contacted on VHF–FM Channel 16 or (310) 521-3801. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). This regulatory action determination is based on the size, location, duration of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the duration of the rule is only four hours and the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. Vessels should be able to transit around the safety zone without interruption. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section 5.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone in an area in the vicinity of the South Jetty of Ballona Creek, Marina Del Rey, CA. Such actions are categorically excluded from further review under paragraph 60(a) of Appendix A, Table 1 of the Department of Homeland Security Directive 023-01-001-01, Rev. 01. An environmental analysis

checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1., Revision No. 01.3

2. Add § 165.T11-115 to read as follows:

§ 165. T11-115 Safety Zone; Marina Del Rey New Year's Eve Fireworks Display; Marina Del Rey, California.

(a) *Location.* The following area is a safety zone: all navigable waters within a 1,000-foot radius around the fireworks display on the South Jetty of Ballona Creek, in vicinity of Marina Del Rey, CA. Enforcement of the safety zone shall begin 15 minutes prior to the commencement of the fireworks display, and for the duration of the fireworks display, expected to commence at 9 p.m., and then again at midnight. Each display is expected to last approximately 30 minutes. These coordinates are based on North

American Datum of 1983, World Geodetic System, 1984.

(b) *Definitions.* For the purposes of this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard designated by or assisting the Captain of the Port Sector Los Angeles – Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or call at (310) 521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 p.m. on December 31, 2022, through 1 a.m. on January 1, 2023. The firework display is scheduled to commence at 9 p.m. and then again at midnight. This rule will be enforced 15 minutes prior to and for the duration of the fireworks displays, which will be broadcasted via local Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

R. D. Manning
Captain, U.S. Coast Guard
Captain of the Port Sector Los Angeles – Long Beach
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